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UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF CALIFORNIA  
**(HONORABLE BARBARA L. MAJOR)**

UNITED STATES OF AMERICA,	)	Case No. 07CR3160-DMS
	)	
Plaintiff,	)	
	)	STATEMENT OF FACTS AND
v.	)	MEMORANDUM OF POINTS AND
	)	AUTHORITIES IN SUPPORT OF
MIGUEL ANGEL ROSAS-LEON,	)	DEFENDANT'S MOTIONS.
	)	
Defendant.	)	

MIGUEL ANGEL ROSAS LEON moves this court for an order requiring the Bureau of Prisons to permit him to telephone his witnesses without charge to him or the witnesses. Mr. Rosas-Leon does not object to monitoring of these phone calls, but asks the Court order the Bureau of Prisons not to divulge to the prosecution any recordings involving communications pertaining to his trial strategy.

**I.**

**FACTS**

Mr. Rosas-Leon is charged by indictment with violating 8 U.S.C. § 1326. On December 6, 2007, this Court granted Mr. Rosas-Leon's request to proceed *pro se*.

Mr. Rosas-Leon is currently incarcerated at the Metropolitan Correctional Center (MCC). The MCC requires that Mr. Rosas-Leon call his witnesses on the Inmate Telephone System, a system that requires either payment by Mr. Rosas-Leon or his witness. In a declaration to the Court, Warnden Paula Jarnecke avers that "there is no mechanism or procedure for permitting free telephone calls on the system

1 utilized by the inmates." The MCC does have phones capable of making free calls, which they have  
2 made available to Mr. Rosas-Leon to make unmonitored contact with his standby attorneys. To date, the  
3 MCC has not made arrangements to permit Mr. Rosas-Leon to use that system while monitored.

## 4 II.

### 5 ARGUMENT

6 The Sixth Amendment guarantees a defendant the right to represent himself in criminal  
7 proceedings. Faretta v. California, 422 U.S. 806, 821 (1975). When a client is indigent, this right  
8 includes access to resources necessary to competently present a defense. See Milton v. Morris, 767 F.2d  
9 1443 (9th Cir.1985) (Holding that the right to self-representation necessarily includes and is premised  
10 upon the right of the defendant to prepare a defense.). The ability to communicate with potential  
11 witnesses is essential to effective self-representation. Id. ("An incarcerated defendant may not  
12 meaningfully exercise his right to represent himself without access to law books, witnesses, or other tools  
13 to prepare a defense."). Compare United States v. Sarno, 73 F.3d 1470, 1491-1492 (9th Cir.1995) (Sixth  
14 Amendment satisfied when defendant permitted to "make monitored phone calls at all times, and. . . two  
15 unmonitored calls per day").

16 In this case, the Bureau of Prisons's policy deprives Mr. Rosas-Leon of access to his witnesses.  
17 Specifically, the Bureau of Prisons refuses to permit Mr. Rosas-Leon either to make unmonitored phone  
18 calls or to permit him to make monitored phone calls without charge.

19 Mr. Rosas-Leon respects the Bureau of Prison's safety interest in monitoring phone calls, and  
20 does not object to the monitoring of his phone calls. He asks, however, that the Bureau make  
21 arrangements for him to use the monitored system free of charge, or arrange for the monitoring of calls  
22 made off the Inmate Telephone System system. While this may result in inconvenience to the institution  
23 by requiring a modification of Bureau policy, that policy must bow to Mr. Rosas-Leon's constitutional  
24 right to a fair trial.

25 Mr. Rosas-Leon also renews his request for a protective order preventing the Bureau of Prisons  
26 from divulging to the prosecution any recordings involving communications pertaining to his trial  
27 strategy.

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**II.**

**CONCLUSION**

For the foregoing reasons, Mr. Rosas-Leon asks the Court to grant his motions.

Respectfully submitted,

/s/ Miguel Angel Rosas-Leon

Dated: December 19, 2007

MIGUEL ANGEL ROSAS-LEON